



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**  
**CIVIL CASE NO. 399 OF 2007**

1.SAMUEL MUTONGA THIRU  
2.GEORGE OTIENO ODUOR  
3.PAUL WAGANDI GUNGA  
4.JOSEPH MBARE NDEGWA  
5.MICHAEL ODAWO OWINO  
6.WANDIMI MWANIKI  
7.RAJAB GATHUMBI ATHMAN  
8.AMOS KINUTHIA MWAURA  
9.PETER NGULI MUNGE MBURU.....PLAINTIFFS

VERSUS

GOLGATE-PALMOLIVE (EAST AFRICA) LTD.....DEFENDANT

**R U L I N G**

1. This suit involves an employer/employee dispute. When the suit came up for pre-trial directions on 14<sup>th</sup> March 2012 the issue of jurisdiction of this Court to hear and determine the suit arose. The learned counsel for the Plaintiffs did not have any objection to the suit being transferred to the **Industrial Court** for disposal.
2. But on 20<sup>th</sup> March 2012 it was submitted for the Defendant that this Court had jurisdiction under **section 22** of the **6<sup>th</sup> Schedule** of the **Constitution of Kenya, 2010** to hear and determine the suit.
3. I have in the recent past dealt with a number of applications for transfer of suits to the Industrial Court. Two such applications were in **Nairobi HCCC No. 747 of 2005** and **Nairobi HCCC No. 848 of**

2005. In a consolidated ruling dated 6<sup>th</sup> and delivered on 9<sup>th</sup> December 2011 (unreported) I rendered myself as follows –

**“Except for the transitional jurisdiction provided for in section 22 of the 6<sup>th</sup> Schedule to the Constitution, this court no longer has jurisdiction to deal with suits involving disputes relating to Article 162 of the Constitution provides as follows in Clauses (2)(a) and (3): -**

**“(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-**

**a. employment and labour relations; and**

**b. ....”**

**(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).”**

And Article 165 (5)(b) of the Constitution provides as follows: -

**“(5) The High Court shall not have jurisdiction in respect of matters-**

**a. ....**

**b. falling within the jurisdiction of the courts contemplated in Article 162(2).”**

The transitional provision in section 22 of the 6<sup>th</sup> schedule is as follows: -

**“22. All judicial proceedings pending before any court shall continue to be heard and shall be determined by the same court or a corresponding court established under this Constitution or as directed by the Chief Justice or the Registrar of the High Court.”**

In a recent ruling dated 30<sup>th</sup> November and delivered on 2<sup>nd</sup> December 2011 in Nairobi HCC 515 of 2003 I had this to say regarding that transnational provision:-

**“The term “...shall continue to be heard...” is in my view instructive. It can only mean that the “judicial proceedings pending” are those cases that are part-heard, not those whose hearing is yet to commence.**

**The Industrial Court has, since the promulgation of the new Constitution, been re-established under section 4 of the Industrial Court Act, No. 20 of 2011 in order to bring it within the new Constitution. That section provides: -**

**“4. (1) In pursuance of Article 162 (2)(a) of the Constitution, there is established the Industrial Court for the purpose of settling employment and industrial relations disputes and the furtherance, securing and maintenance of good employment and labour relations in Kenya.**

**(2) The court shall be a superior court of record with the status of the High Court.**

**(3) The court shall have and exercise jurisdiction throughout**

**Kenya”.**

*Jurisdiction of the Industrial Court is further provided for in section 12 of the said Act. Subsection (1) of that Act provides as follows in part:-*

**“12. (1) The court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the court relating to employment and labour relations...”**

*It is clear that the Constitution intends that the Industrial Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes and appeals involving employment and labour relations.*

*The Industrial Court is a superior court of record with the status of the High Court. The court will no doubt in due course develop its own jurisprudence in employment and labour relations disputes.*

*On the other hand the Constitution specifically denies the High Court jurisdiction in disputes involving employment and labour relations.*

*In my considered view, the transitional provisions under section 22 of the 6<sup>th</sup> Schedule to the Constitution are not intended to facilitate two parallel but different jurisdictions with regard to employment and labour relations disputes. The intention is that where hearing of a matter filed in the High Court or in a subordinate court has already commenced, such hearing ought to be concluded in the High Court or in the subordinate court.*

*On the other hand, where actual hearing has not commenced, then such suit ought to be transferred to the right court, that court being the Industrial Court.*

*In the present suit, actual hearing has not commenced. For good conduct of cases involving employment and labour relations disputes, it is best that such cases pending in the High Court or in subordinate courts where actual hearing has not commenced be forwarded to the Industrial Court for disposal. I so hold”.*

4. In the event this case is transferred to the Industrial Court for disposal. It is so ordered. Costs shall be in the cause.

**DATED AND SIGNED AT NAIROBI THIS 3<sup>RD</sup> DAY OF SEPTEMBER 2013**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF SEPTEMBER 2013**